

The Hon. Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTHER HOFFMAN; SARAH DOUGLASS;
ANTHONY KIM; and IL KIM and DARIA
KIM, husband and wife and the marital
community comprised thereof, on behalf of
themselves and on behalf of others similarly
situated,

Plaintiffs,

vs.

TRANSWORLD SYSTEMS INCORPORATED;
PATENAUE AND FELIX, A.P.C.;
MATTHEW CHEUNG, and the marital
community comprised of MATTHEW CHEUNG
and JANE DOE CHEUNG; National Collegiate
Student Loan Trust 2004-2; National Collegiate
Student Loan Trust 2005-2; National Collegiate
Student Loan Trust 2005-3; National Collegiate
Student Loan Trust 2006-1; National Collegiate
Student Loan Trust 2006-3; National Collegiate
Student Loan Trust 2007-4,

Defendants.

Case No. C18-1132 TSZ

PLAINTIFFS' MOTION TO
COMPEL DISCOVERY

NOTED FOR CONSIDERATION:
April 22, 2022

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Plaintiffs allege, *inter alia*, that Defendants used false and misleading affidavits
3 signed by TSI employees to obtain judgments and collect on Washington residents' debts
4 that the National Collegiate Student Loan Trusts ("NCSLTs") claim they own.¹ The
5 Consumer Financial Protection Bureau ("CFPB"), after an extensive investigation into TSI's
6 collection practices, determined that TSI used false and misleading affidavits signed by TSI
7 employees to obtain judgments and collect on loans that the NCSLTs claim they own. The
8 CFPB's findings were described in a Consent Order to which TSI agreed (the "Consent
9 Order").² The Consent Order required that TSI take specific steps to ensure that its practice
10 of using false and misleading affidavits to collect debts allegedly owed to the NCSLTs
11 ceased.

12 Plaintiffs also allege that TSI continued using false and misleading affidavits and
13 collecting on ill-gotten judgments after being caught by the CFPB, and that Defendants
14 cannot prove the student loan accounts they collect on were assigned to the NCSLTs. The
15 Consent Order includes a finding that TSI does not have many of the records required to
16 prove assignment of student loan accounts to the NCSLTs. Thus, TSI's actions that relate to
17 the Consent Order and Washington accounts that relate to the Consent Order are front and
18 center in this case. TSI should be compelled to produce records and information regarding its
19 collection practices in Washington after the Consent Order was entered and whether it
20 complied with the Consent Order.

21 Plaintiffs now move for an order requiring TSI to provide complete responses to six
22 requests for production and three interrogatories concerning the Consent Order. Plaintiffs'
23 discovery requests are narrowly tailored and relate specifically to TSI's actions taken in
24

25 ¹ "NCSLT" means Defendants National Collegiate Student Loan Trust 2004-2, National Collegiate Student
26 Loan Trust 2005-2, National Collegiate Student Loan Trust 2005-3, National Collegiate Student Loan Trust
2006-1, National Collegiate Student Loan Trust 2006-3, and National Collegiate Student Loan Trust 2007-4.

² On September 18, 2017, the Consent Order was filed in *In re Transworld Systems, Inc.*, File No. 2017-CFPB-
0018 (CFPB Sept. 15, 2017). The filing and entry of the TSI Consent Order was stipulated to by TSI.

1 response to the Consent Order. The discovery requests focus on Plaintiffs' putative class of
2 Washingtonians and there is no good cause for TSI to refuse to provide complete responses.
3 Plaintiffs also move for an award of their attorney's fees incurred for this motion, and for any
4 required reply memorandum in support of the motion, pursuant to Fed. R. Civ. P. 37(a)(5).

5 II. RELEVANT FACTS

6 A. After TSI Obtained Judgments Against Plaintiffs and Putative Class Members, the 7 CFPB Found TSI Was Using False and Misleading Affidavits and Missing Proof of Assignments, and Prescribed Corrective Measures.

8 Between 2015 and 2017 Defendants sued and obtained judgments against the
9 Plaintiffs and other Washington state residents. Leonard Decl. Ex. A at 9. In order to obtain
10 the judgments, Defendants used affidavits signed by TSI employees, in which the employees
11 claimed to have "personal knowledge" of business records and electronic data they stated
12 showed that the NCSLTs had obtained assignments of the student loan debts for which the
13 Plaintiffs were being sued. *Id.*, Ex. B. The TSI employees also testified they had personal
14 knowledge of the record management practices and procedures of the NCSLTs that were
15 plaintiffs in the actions and of the servicers of the debt that the NCSLTs claimed Plaintiffs
16 owed. *Id.* TSI employees further testified they were competent to testify about the
17 information included in their affidavits. *Id.* Notably, the judgments against each of the
18 Plaintiffs were vacated, except for one default judgment obtained against Esther Hoffman.
19 *Id.* at 2, ¶ 4.

20 On September 18, 2017, the Consent Order was entered with the CFPB. It contains
21 the CFPB's factual findings that mirror many of the allegations in this case. The findings
22 include that TSI employees filed misleading and false declarations regarding their personal
23 knowledge to obtain default judgments against consumers in actions brought on behalf of the
24 NCSLTs, and that TSI lacks proof of assignments to the NCSLTs of the alleged student loan
25 debts. Dkt. No. 61, Ex. A at 10-11. The CFPB's findings state with particularity the
26 misrepresentations that TSI used to obtain judgments. *Id.*, Ex. A at 7-8.

1 The Consent Order also includes Conduct Provisions that required TSI to implement
2 procedures and processes to ensure that the wrongful conduct described in the Consent Order
3 findings did not continue. Dkt. No. 61 Ex. A at 12-19. The Consent Order required TSI to
4 transmit copies of the Consent Order to persons who have responsibilities related to the use
5 of the affidavits. *Id.* at 26-27, ¶¶ 69-71. It required TSI to identify accounts for which it did
6 not have proof of assignment of a student loan to an NCSLT, and to identify accounts where
7 it had used false and misleading statements to obtain judgments. *Id.* at 12-13, ¶ 45. The
8 Consent Order also required TSI to take corrective measures such as ceasing collection on
9 the judgments Defendants improperly obtained. *Id.* at 17-18, ¶ 50.

10 **B. Relevant Procedural Background:**

11 Plaintiffs filed this case on June 20, 2018. The Second Amended Complaint was filed
12 on July 7, 2020. Dkt. # 61. Plaintiffs allege that Defendants violated Washington’s Consumer
13 Protection Act, RCW Chapter 19.86 (“WCPA”) and the Fair Debt Collection Practices Act,
14 15 U.S.C. §1692 et. seq. TSI moved for summary judgment dismissal of Plaintiffs’ claims
15 against it on June 10, 2021. Dkt. # 161.³ On July 20, 2021, the Court continued TSI’s
16 Motion for Summary Judgment to allow Plaintiffs to obtain additional evidence in discovery
17 that had not yet been produced. Dkt. # 191.

18 In that same July 20, 2021 Minute Order, the Court granted TSI’s Motion for
19 Protective Order. *Id.* at 1. TSI moved for the Protective Order to prevent having to respond to
20 a discovery request from Plaintiffs that sought “all documents [that TSI] provided [to] the ...
21 [“CFPB”] related to the findings included in the Consent Order.” *Id.* at 1. The Court
22 explained that the request was “simply too broad to permit the Court to determine whether
23 such discovery might contain documents that are relevant to any party’s claim or defense,
24 and the request is not proportional to the needs of the case.” *Id.* (internal quotations
25

26 ³ Defendants have filed a total of five Motions to Dismiss (Dkt. ## 15, 17, 100, 103, 104,) and two Motions for Summary Judgment (Dkt. ## 30 and 161).

1 removed). It continued that “the request is not limited to Plaintiffs’ putative Washington
2 class” and that it had “no method of determining *which* of those documents are relevant or
3 proportional to the needs of this case.” *Id.* at 2-3 (emphasis in original). The Court’s Minute
4 Order did not adopt TSI’s main arguments in its Motion for Protective Order (Dkt. # 156),
5 which were that Plaintiffs’ discovery request invaded the “Bank Examiner Privilege,” and
6 that the CFPB’s rules required TSI to keep the documents confidential. Dkt. #156 at 5-9.

7 On December 16, 2021 Plaintiffs deposed TSI’s Fed. R. Civ. P. 30(b)(6) designee.
8 During the deposition, TSI’s designee refused to answer questions and was instructed to not
9 answer questions regarding what actions TSI took in response to the Consent Order. *See* Dkt.
10 # 8-10. Plaintiffs filed a Motion to Compel Testimony and Class Data on January 13, 2022
11 seeking to compel TSI’s designee to answer questions regarding the actions TSI took in
12 response to the Consent Order. Dkt. # 226. TSI responded that the information was
13 privileged and therefore not discoverable. Dkt. # 249 8-13. On February 8, 2022, the Court
14 ordered TSI to produce again for deposition its Rule 30(b)(6) designee and ordered TSI to
15 provide responses to Plaintiffs’ questions regarding what actions TSI took in response to the
16 Consent Order. Dkt. # 258. The Court concluded that actions TSI took in response to the
17 Consent Order “are not protected from disclosure under the attorney-client privilege, work
18 product doctrine, or common interest doctrine.” Dkt. # 258 at 1.

19 **C. TSI Objected To Plaintiffs’ Narrowly Tailored Discovery Seeking Documents**
20 **Related to the Consent Order and Actions TSI Took In Response to the Consent**
21 **Order.**

22 After receiving the July 20, 2021 Minute Order on TSI’s Motion for Protective Order
23 Plaintiffs propounded additional discovery to TSI, which included the following requests for
24 production:

25 REQUEST FOR PRODUCTION NO. 38: Produce all documents and records
26 related to any delivery of a copy of the Consent Order to any person or entity
pursuant to and in compliance with Page 26, Paragraphs Nos. 69 and 70 of the
Consent Order.

1 REQUEST FOR PRODUCTION NO. 39: Produce all signed and dated
2 statements obtained by TSI as required by the Consent Order, at Pages 26-27,
Paragraph No. 71.

3 REQUEST FOR PRODUCTION NO. 40: Produce all documents and records
4 produced by TSI to the CFPB in response to the CFPB investigation of the
5 NCSLTs and/or TSI that culminated in the Consent Order, that relate to
student loan borrowers in Washington State.

6 REQUEST FOR PRODUCTION NO. 45: Produce all documents and records
7 relating to TSI's identification to the CFPB of Collections Lawsuits that were
8 filed in Washington State between November 1, 2014 and the Effective Date
9 of the Consent Order that are missing the documentation described in
Paragraph No. 45, subsection (f)(i) and (ii) of the Consent Order, as required
by Paragraph No. 45(c) of the Consent Order.

10 REQUEST FOR PRODUCTION NO. 46: Produce all documents and records
11 relating to TSI's notifications as required by Paragraph No. 45(e) of the
Consent Order, as to any Washington State student loan borrowers.

12 REQUEST FOR PRODUCTION NO. 50: Produce all documents and records
13 relating to any notifications by TSI to any law firms, including without
14 limitation P&F, to cease post-judgment enforcement activity against any
15 Washington State student loan borrower, in compliance with Paragraph No.
50 of the Consent Order.

16 Leonard Decl. ¶ 5, Ex. C.

17 In its initial responses to the above requests, TSI did not produce a single document.

18 Leonard Decl. ¶ 5. Despite Plaintiffs' agreement to limit RFPs 40, 45, 46 and 50 to
19 documents related to Washington State student loan borrowers, and specifically identifying
20 the documents they were seeking, TSI still objected to the requests. *See* Leonard Decl. Ex. C.
21 TSI objected that RFPs 45, 46 and 50 were overly broad, disproportionate to the needs of the
22 case, and that they sought privileged documents because the documents related to the
23 Consent Order. *Id.* at 7-9 and 11. Refusing to provide documents responsive to RFP 40, TSI
24 renewed its objections stated in its Motion for Protective Order (Dkt. # 156) and Reply (Dkt.
25 #165). *Id.* at 5. TSI admitted it was withholding documents that were responsive to these
26 requests but did not provide a privilege log. *Id.* at 8 (Response to RFP 45) and 11 (Response

1 to RFP 50).

2 Plaintiffs propounded additional interrogatories, which included requests for the
3 identities of Washington borrowers whose accounts were missing documents (Int. 21) and
4 case numbers for NCSLT cases in Washington where collection was terminated in
5 compliance with Paragraph No. 50 of the Consent Order (Int. 24). Leonard Decl. Ex. D. at 4,
6 6-7. TSI objected to these interrogatories on the basis of privilege and claimed that they were
7 “irrelevant and premature because no class has been certified, and the information sought is
8 not relevant to a Rule 23 analysis.” *Id.* TSI additionally objected to Int. 21 on the basis that it
9 was vague, but stated that “three lawsuits may have been commenced (but subsequently
10 abandoned or dismissed) against Washington consumers in which certain assignment
11 documentation is not within TSI’s possession....” *Id.* at 4.

12 **D. TSI Continues to Withhold Numerous Documents Despite the Court’s February 8,**
13 **2022 Order.**

14 After the Court’s ruling on Plaintiffs’ Motion to Compel Testimony, Plaintiffs sent
15 TSI a request for a discovery conference regarding RFPs 38, 39, 40, 45, 46 and 50 and
16 Interrogatories 21 and 24, as well as others. Leonard Decl. ¶ 8, Ex. G. The parties conferred
17 on March 17, 2022. Leonard Decl. ¶ 8. Instead of engaging in meaningful discussions
18 regarding the requests and TSI’s objections, TSI’s counsel stated that TSI would agree to
19 supplement some responses by March 21, 2022. *Id.* TSI did not identify which responses it
20 would be supplementing despite Plaintiffs’ attempts to discuss the particulars. *Id.* On March
21 21, 2022, Plaintiffs received TSI’s First Supplemental Responses to Plaintiffs’ Second
22 Interrogatories and TSI’s First Supplemental Responses to Plaintiffs’ Second Requests for
23 Production. Leonard Decl. ¶¶ 5 and 6. TSI provided two one-page documents it alleged were
24 responsive to Interrogatories 21 and 24, and a single-page document it alleged was
25 responsive to RFP No. 38. *Id.* On March 25, 2022, TSI provided another document that
26 contained a list of names in response to RFP Nos. 38 and 39. *Id.* ¶ 5, Ex. C at 4.

1 TSI's limited Supplemental Responses indicate that it has withheld numerous
2 documents and significant information. TSI refuses to produce documents responsive to RFP
3 Nos. 38 and 39, for documents related to the transmission of a copy of the Consent Order to
4 persons who have responsibilities related to the false and misleading affidavits. Leonard
5 Decl., Ex. C at 4.⁴ The documents it produced lists only the names of persons, many of
6 whom were not previously disclosed, who TSI claims received a copy of the Consent Order.
7 Leonard Decl. ¶ 5, Ex. C at 4. TSI's supplemental response to RFP No. 45 renews its prior
8 objections and states that it is withholding from production a listing of accounts that was
9 provided to the CFPB in compliance with one or more Consent Order requirements. Leonard
10 Decl. Ex. C at 7-8. TSI's supplemental response to RFP No. 50 identifies specific letters that
11 are responsive but that have been withheld from production. *Id.* at 11-12. TSI states that the
12 letters contain privileged communications between TSI and P&F. The description of the
13 letters that are being withheld indicates that they are letters TSI sent to all collection firms
14 and that there is an Excel spreadsheet that was provided to P&F that is being withheld. *Id.*

15 TSI's supplemental responses provided no additional information for RFPs 40 and 46.
16 *Id.* at 5 and 8-9. TSI stands on its objection that the documents are privileged and need not be
17 produced because they were provided to the CFPB. Leonard Decl. Ex. C at 5 and 8-9; *and*
18 Leonard Decl. Ex. H.

19 TSI's supplemental answers to Interrogatory Nos. 21 and 24 also indicate information
20 is being withheld. Interrogatory Nos. 21 and 24 request information on cases where
21 collection was terminated in response to the Consent Order. Leonard Decl. Ex. D at 4-6. TSI
22 provided a list of cases, all NCSLT 2005-3 cases, some with incorrect case numbers. *See*
23

24 ⁴ RFP No. 38 references paragraphs 69 and 70 of the Consent Order, which require TSI to deliver "a copy of the
25 Consent Order to each of its board members, managers, employees, Service Providers, or other agents and
26 representatives who have responsibilities related to the subject matter of the Consent Order." RFP 39 requests
copies of the Consent Order that were signed by those individuals to whom TSI was required to provide a copy
of the Consent Order under paragraphs 69 and 70 of the Consent Order. The signature requirement was included
in paragraph 71 of the Consent Order. *See* Dkt. 61, Ex. A at 26 (pp. 65).

1 Leonard Decl. Exs. E, F and H. Plaintiffs inquired why the results returned pertained only to
2 NCSLT 2005-3 cases and about the nature of the search TSI conducted. *Id.*, Ex. H. The cases
3 on the list Plaintiffs were able to locate included affidavits from TSI employees that were not
4 previously disclosed. Leonard Decl. ¶ 6. TSI responded to Plaintiffs' request for additional
5 information by stating that it provided all the information it has and if Plaintiffs require more
6 information, they should discuss it with P&F. Leonard Decl., Ex. I. TSI refused to discuss
7 how its search was performed or explain why the names of the affiants in the records of those
8 cases identified in the response had not previously been disclosed. *Id.*

9 II. LCR 37(a)(1) CERTIFICATION OF COMPLIANCE

10 Plaintiffs' counsel certify that they met and conferred with TSI's counsel via Zoom in
11 a good faith effort to resolve their discovery dispute without Court action on March 17, 2022.
12 Upon receipt of supplemental responses to discovery on March 21, Plaintiffs' counsel
13 attempted to schedule a follow up discovery conference regarding the supplements. TSI's
14 counsel refused to meet and confer and stated that the parties were at an impasse on March
15 28, 2022.

16 III. ARGUMENT

17 A. The Scope of Discovery Is Broad and TSI Should Be Compelled To Respond To 18 Plaintiffs' Narrowly Tailored Discovery Requests Seeking Relevant Information.

19 Fed. R. Civ. P. 26(b) allows broad discovery into relevant information that is
20 proportional to the needs of the case:

21 Parties may obtain discovery regarding any nonprivileged matter that is
22 relevant to any party's claim or defense and proportional to the needs of the
23 case, considering the importance of the issues at stake in the action, the amount
24 in controversy, the parties' relative access to relevant information, the parties'
25 resources, the importance of the discovery in resolving the issues, and whether
26 the burden or expense of the proposed discovery outweighs its likely benefit.
Information within this scope of discovery need not be admissible in evidence
to be discoverable.

27 A district court has broad discretion in controlling discovery. *Little v. City of Seattle*,
28 863 F.2d 681, 685 (9th Cir. 1988). Pretrial discovery is ordinarily "accorded broad and liberal

1 treatment.” *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S. Ct. 385 (1947). “This broad right of
2 discovery is based on the general principle that litigants have a right to ‘every [persons]’
3 evidence,’ and that wide access to relevant facts serves the integrity and fairness of the
4 judicial process by promoting the search for the truth.” *Shoen v. Shoen*, 5 F.3d 1289, 1292
5 (9th Cir. 1993) (quoting *United States v. Bryan*, 339 U.S. 323, 331, 70 S. Ct. 724 (1950)).

6 “The party who resists discovery has the burden to show that discovery should not be
7 allowed, and has the burden of clarifying, explaining, and supporting its objections with
8 competent evidence.” *Doe v. Trump*, 329 F.R.D. 262, 270 (W.D. Wash. 2018) (internal
9 quotes omitted); *see also Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).
10 “The party resisting discovery on grounds of privilege also bears the burden to show that the
11 requested discovery is so protected.” *Id.* at 271.

12 **1. TSI Should Be Compelled to Produce Complete Responses to Plaintiffs’**
13 **Narrowly Tailored Discovery Requests That Seek Relevant Information.**

14 Plaintiffs’ RFP Nos. 38, 39, 40, 45, 46 and 50 and Interrogatory Nos. 6, 21 and 24 are
15 narrowly tailored to obtain information relevant to Plaintiffs’ claims and no privilege applies
16 that bars discovery. This is the third time Plaintiffs have been before the Court seeking to
17 obtain information related to actions TSI took in response to the Consent Order. Along the
18 way, Plaintiffs have narrowed their discovery requests and specifically identified the
19 information and documents they seek.

20 **a. Plaintiffs’ RFPs are narrowly tailored and seek relevant documents.**

21 The Court’s July 20, 2021 Minute Order regarding TSI’s Motion for Protective Order
22 faulted Plaintiffs’ RFP No. 13 because it broadly sought “*all* documents [that TSI] provided
23 [to] the ... [CFPB] related to the finding included in the Consent Order.” Dkt. # 191 at 1
24 (emphasis added). The Court also faulted the request because it was “not limited to Plaintiffs’
25 putative *Washington* class.” *Id.* (emphasis added). Plaintiffs’ RFP Nos. 38, 39, 40, 45, 46 and
26 50 and Interrogatory Nos. 21 and 24 do not suffer this fault.

1 Plaintiffs' RFP Nos. 38 and 39 are limited to two specific requirements in the Consent
2 Order: that TSI (1) communicate the Consent Order to certain individuals and (2) obtain their
3 signature showing they received the Consent Order. TSI's limited response – a list of names –
4 indicates that responsive records are not so broad that TSI cannot identify and produce them.
5 TSI's refusal to provide the documents showing that it provided a copy of the Consent Order
6 to those individuals listed in the document produced in response to RFP 38 and 39 is
7 particularly perplexing. The Consent Order required TSI to obtain a signed a dated statement
8 acknowledging receipt of a copy of the Consent Order from every person on the list TSI
9 provided. Dkt. # 61, Ex. A at 26-27, ¶ 71. If TSI refuses to produce these documents on the
10 basis of relevance, this objection was not in its initial response and is therefore waived. *See*
11 *LifeGoals Corp. v. Advanced Hair Restoration LLC*, No. C16-1733JLR, 2017 U.S. Dist.
12 LEXIS 208507, at *7 (W.D. Wash. Dec. 19, 2017) (objections raised for the first time in
13 supplemental responses are waived). The relevance objection is also without merit: Plaintiffs'
14 claims, in part, concern TSI's continued collection after entry of the Consent Order, when it
15 failed to comply with the Consent Order requirements. *See* Dkt. # 275 at 3 (compiling
16 paragraphs in the Second Amended Complaint relating to each of Plaintiffs' claims); *and* Dkt.
17 # 232 at 1 (definition of Plaintiffs' proposed classes contained in Plaintiffs' Motion for
18 Certification).

19 TSI's objections that RFPs 40, 45 and 46 are overly broad, vague or seek documents
20 not relevant, are also without merit. These requests are limited to documents and information
21 regarding specific acts the Consent Order required TSI to take concerning accounts of putative
22 class members. They are all limited to documents related to "Washington State student loan
23 borrowers." While TSI's objections to each of these requests are the same as those at issue in
24 its Motion for Protective Order (Dkt. # 156), because these requests are narrow and specific
25 and limited to putative class member accounts, TSI's objections do not apply to these
26 requests, as they applied to RFP No. 13.

1 **b. No privilege applies that prevents production of withheld documents.**

2 Regarding TSI's claim that the documents requested in RFP Nos. 40, 45, 46 and 50 are
3 privileged because they relate to the CFPB investigation, no such privilege exists. Whether
4 TSI continued the practices that the CFPB ordered it to stop is front and center in this case.
5 TSI's argument that the requested information and documents are privileged under 12 CFR §
6 1070.2(i) was rejected in *Michelo v. Nat'l Collegiate Student Loan Tr.* 2007-2, No. 18-CV-
7 1781 (PGG) (BCM), 2020 U.S. Dist. LEXIS 140889 at *3-4 (S.D.N.Y. Aug. 6, 2020) and
8 *Michelo*, 2020 WL 9423921, at *4-5 (S.D.N.Y. Aug. 31, 2020), and this Court did not adopt
9 it. Dkt. # 181. To the extent that this issue is unresolved, Plaintiffs incorporate their argument
10 contained in their Response to TSI's Motion for Protective Order. *See* Dkt. # 163.

11 Regarding TSI's assertion of attorney-client privilege to hide the contents of the
12 communications responsive to RFP No. 50, those communications do not appear to have
13 anything to do with requests for legal advice. As such they are not attorney client privileged.
14 *See United States v. Gurtner*, 474 F.2d 297, 298 (9th Cir. 1973). Just because a
15 communication is had with an attorney, does not protect it from attorney client privilege. *Id.*

16 **c. TSI does not have good cause to refuse to supplement Interrogatory**
17 **No. 6 and provide complete responses to Interrogatory Nos. 21 and 24.**

18 Lastly, TSI's supplemental responses to Interrogatory Nos. 21 and 24 still withheld
19 the names of persons with relevant information, and it must be required to produce complete
20 answers. The lists of cases TSI provided in response to Interrogatory Nos. 21 and 24 contain
21 erroneous information, such as "case numbers" that are not valid case numbers. Leonard
22 Decl. ¶ 8, Exs. E, F and H. TSI's refusal to meet and confer on the basis of attorney-client
23 privilege and work product is extraordinary. *See* Leonard Decl., Ex. I at 2. The responses to
24 Interrogatory Nos. 21 and 24 also reveal that there are individuals that signed affidavits filed
25 in NCSLT lawsuits in Washington to obtain judgments that were not disclosed in TSI's
26

1 response to Interrogatory No. 6.⁵ TSI's refusal to supplement its response to Interrogatory
2 No. 6 to include the names of all persons who signed affidavits filed in Washington in
3 support of lawsuits brought on behalf of the Defendant NCLSTs during the class period is
4 without justification. This information is relevant and there is no privilege that protects it
5 from disclosure.

6 **B. Plaintiffs are Entitled to an Award of Their Reasonable Attorney's Fees for This**
7 **Motion.**

8 Fed. R. Civ. P. 37(a)(5) requires the Court to award a party who successfully moves to
9 compel compliance with a discovery obligation, reasonable attorney's fees related to the
10 motion, unless (1) the moving party filed the motion before attempting in good faith to obtain
11 the disclosure or discovery without court action, (b) the opposing party's nondisclosure,
12 response, or objection was substantially justified, or (c) other circumstances make an award of
13 expenses unjust. Here, the Plaintiffs have bent over backward in their attempt to obtain the
14 discovery which TSI refuses to provide. Plaintiffs have participated in several discovery
15 conferences with TSI's attorneys, and were willing to continue to negotiate until TSI simply
16 refused to confer any further. At this point, there is no just reason for TSI to continue to refuse
17 to provide the requested information and documents, and there are no existing circumstances
18 that would make an award of Plaintiffs' attorney's fees unjust. The Court should award
19 Plaintiffs their reasonable attorney's fees for this motion and any reply they file in support of
20 the motion. Fed. R. Civ. P. 37(a)(5).

21 **IV. CONCLUSION**

22 For the forgoing reasons Plaintiffs request the Court to order TSI to provide complete
23 responses to RFP Nos. 38, 39, 40, 45, 46 and 50 and Interrogatory Nos. 6, 21 and 24, and to
24 award them their attorney's fees for this motion and any reply memorandum in support of
25 this motion.

26 ⁵ "INTERROGATORY NO. 6: List the name, address, and telephone number of each person having any
knowledge of facts regarding and/or related to Plaintiffs' claims asserted against Defendants in this action."

1 DATED: April 4, 2022.

2 ***Attorneys for Plaintiffs:***

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